EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

Supreme Court, U.S.
FILED

03 . 13 JUN 27 2003

OFFICE OF THE CLERK

No. 03-

IN THE

Supreme Court of the United States

THE REPUBLIC OF AUSTRIA, a foreign state, and the AUSTRIAN GALLERY,

Petitioners,

v.

MARIA V. ALTMANN,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

SUPPLEMENTAL APPENDIX

SCOTT P. COOPER*
CHARLES S. SIMS
JONATHAN E. RICH
TANYA L. FORSHEIT
PROSKAUER ROSE LLP
2049 Century Park East
Suite 3200
Los Angeles, CA 90067
(310) 557-2900

* *Counsel of Record*

Attorneys for Petitioners

181480

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

TABLE OF CONTENTS

Appendix To The Opinion Of The United States
Court Of Appeals For The Ninth Circuit
Dated And Decided December 12, 2002

EXHIBIT A

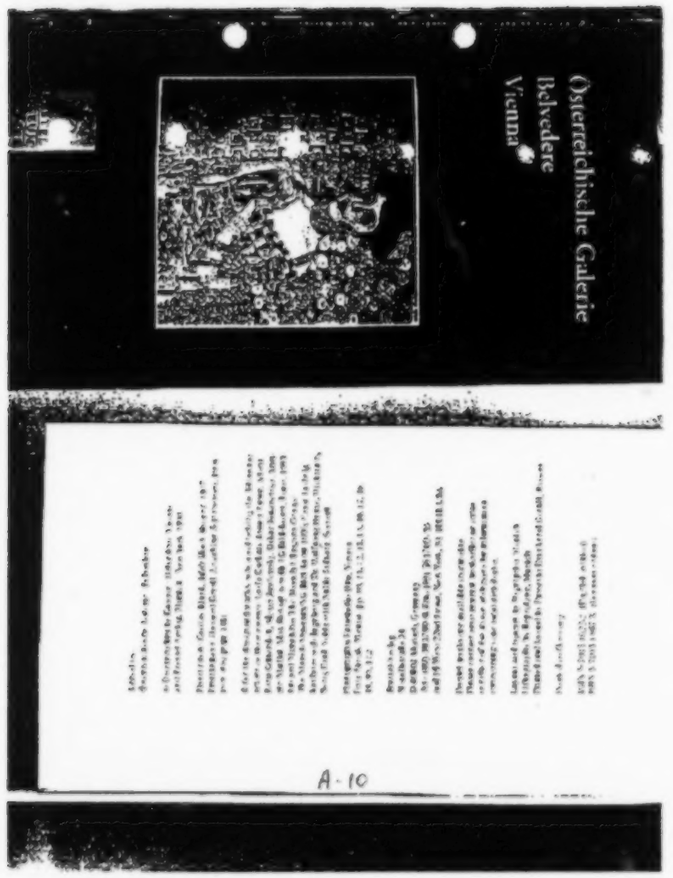


EXHIBIT B

GERBERT FRODL

GUSTAV KLIMT

in the

AUSTRIAN GALLERY BELVEDERE

in Vienna

VERLAG GALERIE WELZ · SALZBURG

B- 11

ADELE BLOCH BAUER I. 1907

Oil, silvering and gilding on canvas, 1[illegible] x 1[illegible] cm

Signed and dated bottom right: GUSTAV KLIMT [illegible]

Inventory No. 3833

Acquired through a bequest (1936) of the Bloch Bauer [illegible], Vienna

Nemeny Decker, No. 192

Cf. Strobl I, Nos. 3284–3311 and IV, Nos. 4[illegible]

Last exhibition unofficially in the Wiener Werkstätte [illegible] and a temporary loan to the International Art Exhibition, Manchester, No. 417.

This portrait of Adele Bloch Bauer (1881–1925), wife of the Viennese industrialist Ferdinand Bloch, is the most important work of the so-called "golden style" span, from "Pallas Athene" to "Danaë". Its [illegible] is often somewhat misleading when it is quite consciously Klimt's answer to the impression of the Viennese Secession made [illegible] Ludwig Hevesi, friend and promoter of the Secession, called the picture an "idol or a golden reliquary holder", correctly drawing attention to an affinity with the Byzantine mosaics in Ravenna, and in particular the 6th century figure of the Empress Theodora in San Vitale. This representative portrait evidently held a special significance for Klimt himself, since he did more than 100 preparatory studies for it over a period of several years. He would seem to have conceived it as a universally valid celebration of a beautiful woman, and thus of the female sex in general, which was to be depicted with all the [illegible] belonging an empress. Form and content, down to the endeavors of colors, and [illegible] the influence of historical [illegible], are here partially summoned in a way that distinguishes Viennese Jugendstil from the related art and decorative [illegible] of other European cities. Of course there is a danger that the preponderance of ornamentation and [illegible] might reduce [illegible] to [illegible], the subject matter, however, is [illegible]

Adele Bloch Bauer in her drawing room

R- 12

B - 13

ADELE BLOCH-BAUER II. 1912
Oil on canvas, 190 x 120 cm
Signed bottom right: GUSTAV KLIMT
Inventory No. 6810
Acquired through a bequest [1938] of Ferdinand Bloch-Bauer.
Formerly in the Bloch-Bauer Collection, Vienna

Nirenstein/Dobbal. No. 177
Ch. Strobl T. Nrs. 2076-2712
Exhibition: XI. Internationale Kunstausstellung, Munich 1913, No. 1169

After the high points of his golden style had been reached with the portrait of "Adele Bloch-Bauer I" and "The Kiss" [see p. 33], Klimt abandoned the use of gold in his work. In its place came a stronger use of colour, which was henceforth to characterise all his painting. The decisive factor behind this change cannot be discovered from any statements by Klimt himself (who very seldom commented on his art), but can be inferred from contemporary tendencies in painting, where colour came to prevail over form (Fauvism in France, Expressionism in Germany). The contrast between the first golden portrait of Adele Bloch-Bauer and this work, painted five years later, is very great. A marked change in approach is apparent in the composition (from view on Klimt's favoured standing models over the narrow but still sitting pose), and in the quite different sort of colouring, also in the contrast, spatially the impression created by the richness and pose of the subject. The latter's "intense dalrymple and soul-penetrating, sagacious" [Dominy] suggests the influence of two painters of the younger generation, Egon Schiele and Oskar Kokoschka; the uncompromising precision of human nature in their art had so impressed Klimt that he provided both of them with their first opportunity to exhibit before a wider public.

B - 14

B - 15

PORTRAIT OF AMALIE ZUCKERKANDL, 1917/1918
Unfinished
Oil on canvas, 148 x 120 cm
Unsigned
Inventory No. 7702
Acquired in 1986 from Viennese private ownership
Formerly in the Zuckerkandl collection, Vienna, the Bondi-Bauer collection, Vienna, and the Dr. Otto Hofmann collection, Vienna

Novotny/Dobai, Nr. 213
Cf. Strobl III, Nrs. 2968-2495
First exhibition: Gustav Klimt Memorial Exhibition, Secession, Vienna, June-July 1928, Nr. 56

Amalie Zuckerkandl (1869-1944) was the wife of the Viennese medical professor, Otto Zuckerkandl, who in turn was the brother-in-law of the journalist, writer and admirer of Klimt's work, Berta Zuckerkandl. In 1914 Klimt had already done a series of pencil studies for Amalie's portrait. Her long absence from Vienna caused the work to be interrupted and it could only be continued in 1917. The portrait shows her sitting the pose is uncompromisingly frontal, all illusion of space being absent, (this basic feature remaining even in the finished painting). In Klimt's late work the choice of a square format for a portrait is unusual.

63
B - 16

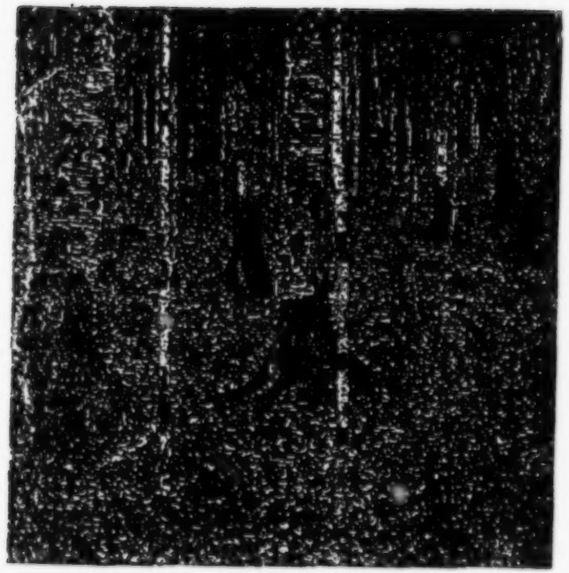
B-17

BEECHWOOD (Buchenwald), 1902
Oil on canvas, 110 x 110 cm
Signed bottom left: GUSTAV KLIMT
Inventory Nr. 4283
Acquired through a bequest (1968) of the Bloch-Bauer family

Novotny-Dobai, Nr. 136
First exhibition: Secession XVIII, 1903 (Nr. 3 or Nr. 4 - both were entitled "Buchenwald")

It is hard to decide whether this picture should be called "Beechwood" (Novotny/Dobai) or "Beechwood" (the latter because manifestly more beeches than firetrees are depicted); but in any case the decision has little importance beyond epistemological conventions. Klimt painted the interior of a wood several times, on each occasion slightly changing the angle of vision. In the other version of the present picture, painted also in 1902, a patch of bright sky is discernible beyond the tree trunks. As early as 1901 he had painted a "fir forest". In all these pictures the predominant colouring is not so much green as the brown and grey tones of the dried leaves or the fresh flaxen red of the bark. Although such works are scarcely comparable to Claude Monet's harmonies of natural depictions (for example of his stacks), Klimt's few woodland pictures nevertheless exhibit more of the ideas and impact of impressionism than do his later paintings of gardens and meadows.

B-18



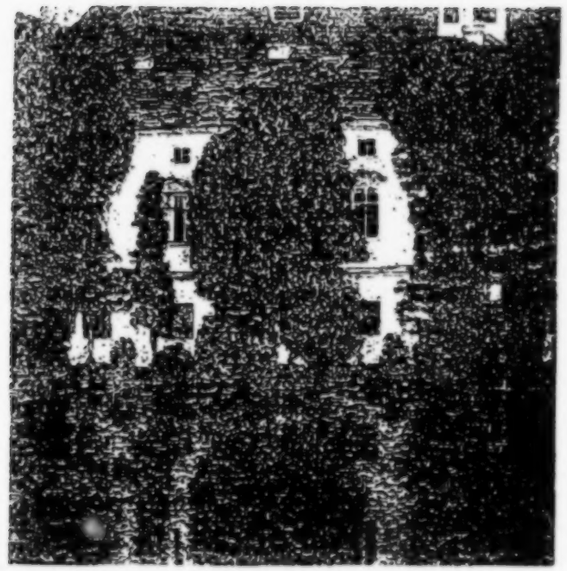
B-19

SCHLOSS KAMMER AM ATTERSEE (Waterside Mansion) III. 1910
Oil on canvas. 110 x 110 cm
Signed on the rear, right-hand side: GUSTAV KLIMT
Inventory Nr. 4318
Acquired through a bequest (1941) of the Bloch Bauer family

Novotny/Dobai, No. 171
First exhibition: Galerie H. O. Miethke, Vienna, October/November 1910

The picture shows the lakeside facade of Schloss Kammer am Attersee near Seewalchen, a 17th century mansion altered and enlarged in the 18th century. In the summer months of the years 1908 to 1912 Klimt lived with the Flöge family in the Villa Oleander in Kammer, near Kammer. It has hitherto been assumed that the picture was painted from a boat, but this cannot be sustained with certainty. Between 1908 and 1912 Klimt did three other views of Schloss Kammer (which still exists in unaltered form) – *Schloss Kammer am Attersee I* (Prague, National Gallery), *II* and *IV* (Private ownership, USA and Vienna). The main facade of the Schloss was surveyed by the painter in his remarkable "Allee" (see p. 87).

B-20



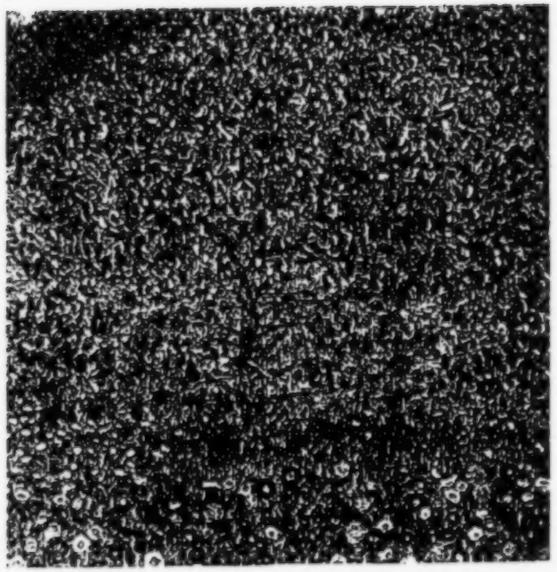
B-21

APPLE TREE I 1911 or 1912
Oil on canvas, 109 x 110 cm
Signed bottom right: GUSTAV KLIMT
Inventory No. 3341
Acquired through a bequest (1936) of Adele Bloch-Bauer
Formerly in the Bloch-Bauer collection, Vienna

Novotny-Dobai, Nr. 182
First exhibition: Graz Art Exhibition, Dresden 1912, Nr. 1032

Trees, and frequently just a lone tree, are a favourite subject of Klimt, their richly suggestive form evidently holding a seductive fascination for him. When the painting is of a single tree, the latter is not so much a particular, observation-drawing feature, but rather the painter's compositional point of reference, the exposure of nuanced colour. These nuances are achieved by the juxtaposition of differently tinted brushstrokes, the latter supplying individual illumination of green, blue or similar colour. The leaves thus symbolically seem to glow with a light that is more turbulent and agitated than that of the blossoming flowers in the foreground. The present picture symbolically illustrates the mutuality of nature and light, recalling Klimt's earlier (albeit very different) use of the tree as a symbol, one of the "tree of life". "*Apple tree I*" is regarded to be one of the artist's most profoundly private and meditative works.

B-22



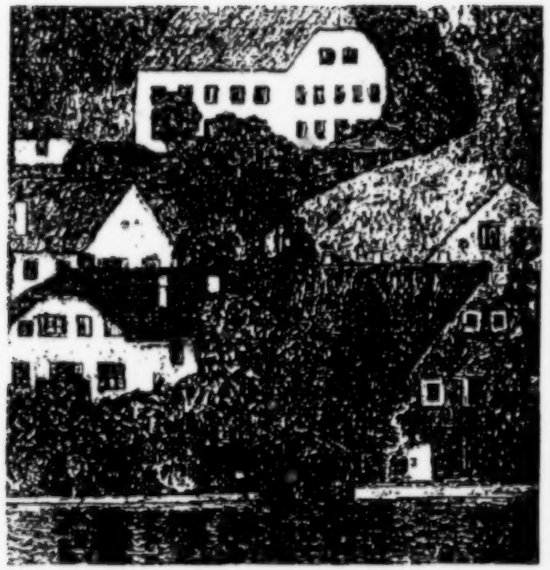
B-23

HOUSES IN UNTERACH AM ATTERSEE. Around 1916
Oil on canvas, 110 x 110 cm
Unsigned
Inventory No. 4209
Acquired in 1948 through the Bloch Bauer bequest, Vienna

Novotny/Dobai, Nr. 159
First exhibition: Gustav Klimt Memorial Exhibition, Secession, Vienna June-July 1928, No. 36

Klimt's late landscapes may be differentiated in several ways from the earlier ones in particular there is more emphasis on colour as a compositional element, a development that is directly related to the greater freedom in painting generally at that time. This freedom is, of course, reflected in all of Klimt's work. In contrast to his earlier representations of pure nature (gardens, meadows and woods) he now devoted himself to architectonic motifs, principally the villages along the banks of the Attersee. The impetus for this change may have been provided by a stay on Lake Garda in the summer of 1913, when he painted two views of small, watered towns. In the present work he integrates the blocks of houses into the surface of the picture, scarcely bothering about the intervening and perspective. The smooth, colourful walls are animated with the rather hermetic painted eyes. On the bank can be seen flowers painted with detailed precision.
The picture dates to a period when the artist was spending the summer months at Weißenbach am Attersee with the Flöge, for whom he was practically one of the family. It was at Weißenbach also that Klimt painted the two views of the forester's house that he himself occupied each summer between 1911 and 1914.

A-24



B-25

EXHIBIT C

Klimt's Women

Edited by
Tobias G. Natter and Gerbert Frodl

DUMONT

C-26

C-27

Portrait of Adele Bloch-Bauer I

1907

The portrait of Adele Bloch-Bauer I is possibly the most famous if not greatest and richest work of his so-called "golden style". Adele Bloch-Bauer was twenty-six years old when Klimt painted her, yet nothing about her appearance can be detected in the portrait. The mastery of the picture goes both a step and a step. Like no other painter, Klimt proposed a definitive [illegible] and established, which [illegible] dates to 1903/04, assuming that a realization of the picture in gold was planned even then.[1] The early date is confirmed by a letter from Adele Bloch-Bauer dated 22 August 1903, in which she discusses the date for the wedding anniversary of her parents on 15 October 1903: "Originally, we children wanted to give them a joint present, but now we have totally abandoned the idea. My husband also [illegible] to have one painted by Klimt, who, however, cannot work before winter. So my parents will get hers in the autumn."[2]

The picture was first exhibited as part of a presentation of projects of the Vereinigung bildender Künstler Österreichs (Association of Austrian Artists) in March and April 1907.[3] The first evaluation of the Viennese public took place on the occasion of the Kunstschau in 1908.[4] In the literary edgewood Zeitung, one could read about an "idol in a golden shrine," while a corresponding verse stated mockingly: "Adele Bloch from Bloch".[5]

The subject is sitting or rather floating in front of a golden chair whose back extends itself only in the most abstract way. All details of the picture—especially the subject's body—seem to dissolve in the splendour of the golden shimmer. As with Byzantine icons, only the face and the hands remain visible under the gold. Still under the "revelatory" spell, Klimt separated from Romako in 1901 "[the museum of unprecedented splendour]".[6]

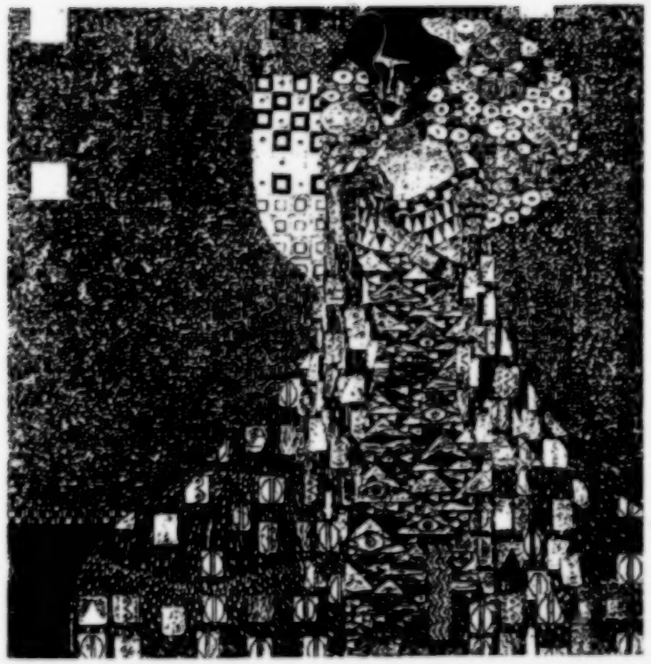
For hours, it was "mosaic painting", with the women's portrait a cross between painting and handicraft, executed with the meticulousness of a goldsmith. Johannes Dobai ascribed a structural role to the gold ornament: "In this case, gold symbolises both as well as space. Ornament as well as space rises in a world detached from itself."[7]

Klimt used this gold in different ways: in the spirit of Japanese landscape painting on the background, producing a diffuse haze, or making the pattern stand out in bold relief and overlaying it with real gold [illegible]. The strongest inner contradiction arises between the picture's wholly abstracted motifs and their concrete explanation. The subject's cool, openly wide stare, to the side, is treated as a sweeping zone of texture. The garment visible underneath is striped with Egyptian geometric motifs, and hangs on the straps from the narrow shoulders. The magic of the geometry, the perfect

Gustav Klimt, Adele Bloch-Bauer I, 1907

C-28

C-29



C-30

[illegible]

Maria Altmann, the only niece still alive, remembers her aunt whose passing it of its demanded an endless investigation towards the architectural. She describes Adele was the following attributes: "Sick, suffering, always with headache, smoking like a chimney, terrible 'self' first. A spiritual face with elegant Constantin arrogant" that was the impression she made on my adult I was a child, always sent my intellectual immature son." She is also mentions a crooked finger that the aunt always tried to conceal. This is reportedly why Klimt chose this particular hand position in the portrait.

In December 1918, Ferdinand Bloch Bauer bought the house at 16 Elisabeth strasse, nearly opposite the Academy in Schillerplatz. Here, Adele Bloch Bauer established the hospitality that had turned her house into one of the centres of the Viennese fin de siècle. In the 1920s, she continued to gather intellectuals, artists and Social Democratic politicians round her. Alma Mahler-Werfel and her husband, Richard Strauss, Stefan Zweig, Julius Meinl-Reisenbach, Karl Renner, and police "minister Schober" were frequent guests at her house. As her niece Maria Altmann remembers: "Adele was not happy at home. She wanted to study, which was not customary for a young girl at that time, so she married instead."[7] She was a dilettante who had private studies in German, French and English literature.

Adele Bloch Bauer died on 24 January 1925,[8] when she was just over 43 years old. Her cause of death was given as meningitis, but it is probable that she died of tuberculosis, which was not publicly admitted to be the cause of death because of the stigma attached to the disease. Her husband, Ferdinand Bloch Bauer, was a prominent sugar industrialist and a generous patron of the arts. He was also a passionate collector of paintings, porcelain and antiques. Adele's death left him devastated. He commissioned Gustav Klimt to paint a portrait of his wife, which was completed in 1907. Klimt's work was influenced by the Byzantine mosaics he had seen in Ravenna in 1903, and by the Minoan and Mycenaean art he had seen in Athens in 1905. The portrait of Adele Bloch Bauer is one of Klimt's most famous works. It depicts Adele in a golden dress, surrounded by a golden background. The dress is decorated with geometric patterns and symbols, and Adele's face is serene and beautiful. The portrait is a masterpiece of the Art Nouveau style, and it is considered to be one of the most important works of art in Austria.

After Adele's death, Ferdinand Bloch Bauer left Austria and moved to Switzerland. He died in Zurich on 13 November 1945. The Nazis had confiscated his property in Austria, and he was forced to flee the country. He left behind a will in which he bequeathed his collection of paintings to the Austrian state. However, the will was contested by his heirs, and the paintings were not returned to the family until 2006. The case of Adele Bloch Bauer's portrait is one of the most famous examples of Nazi-era looted art. The painting was stolen by the Nazis in 1938, and it was not returned to the family until 2006. The case of Adele Bloch Bauer's portrait is one of the most famous examples of Nazi-era looted art. The painting was stolen by the Nazis in 1938, and it was not returned to the family until 2006.

C-31

C-32

Portrait of Adele Bloch-Bauer II

[illegible]

Adele Bloch-Bauer was the only woman who had enough wealth and enthusiasm for the arts to be painted more than twice by Gustav Klimt. The first picture (fig. p. 113), where the subject is sitting, was long kept among the family treasures. A conventional likeness that apparently had been cool to the sitter's formality, Klimt divides the background into fourteen nearly equipotent areas of silver, mid, gray and gold. Gallop ing rectangular shapes from Asian examples enliven the tapestry zone.

There is a most difference between the two Bloch-Bauer portraits. With the stunning portrait of Adele Bloch-Bauer, Klimt developed from a comparatively neutral color to a fantastic effect. The painter in 1912 the art historian Hugo Haberler said about an "Austrian" new beginning. "I think the artist is going to build a new, ideal portrait, so to speak, of the lady, to find personality formed exclusively in gold and silver. We should."

Yet "beautiful, so to speak" a work of allusion to [illegible] is new. The motifs key prominently in the use of color. This symbolism of colors, as well as the new treasure as the artificial, was already to be found in Klimt's landscapes, but now for the first time these features play a role in the portrait. The ornaments, because of their symbolic were also created by the young inner [illegible]. Obviously, the Egyptian [illegible] of the Vienna Secession [illegible] in 1909 [illegible] and the mission [illegible] as well as the exhibition of his works in Paris in 1908 and Brussels in 1911 [illegible] the ultimate development of this trend in the Adele [illegible].

In connection with the portrait Adele Bloch-Bauer I (p. 116), some interesting comparisons [illegible] between the two [illegible] Both represent the sitter [illegible] the [illegible]. The [illegible] of the [illegible] [illegible] with [illegible] Adele appears in any [illegible] [illegible] [illegible]

Portrait of Amalie Zuckerkandl

C-35

C-36

EXHIBIT D

AUSTRIAN INFORMATION

WASHINGTON, D.C. Volume 53, No. 7/8, July/August 2000

VIENNA MODERNISM
1890 - 1910

AUSTRIAN INFORMATION, in a series of issues, will present its readers with Austrian Modernism. Picture above: "Lady in Gold" (Portrait Adele Bloch-Bauer) by Gustav Klimt, ca. 1907, Austrian Gallery

E-04